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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/450,308	11/29/1999	STUART C. MAUDLIN	21632-P001US	7438

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EXAMINER

REAGAN, JAMES A

ART UNIT PAPER NUMBER

3621

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/450,308

Applicant(s)

MAUDLIN, STUART C.

Examiner

James A. Reagan

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4, 5, 8, 10, 12, 13, 16, 19, 20, 23, 25, 27, 28, 31 and 33-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 5, 8, 10, 12, 13, 16, 19, 20, 23, 25, 27, 28, 31, and 33-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### **Status of Claims**

1. This action is in response to the restriction requirement and subsequent election received on 12 May 2004.
2. Group I (claims 1, 2, 4, 5, 8, 10, 12, 13, 16, 19, 20, 23, 25, 27, 28, 31, and 33-38) have been elected.
3. Groups II and III (claims 3, 6, 7, 9, 11, 14, 15, 17, 18, 21, 22, 24, 26, 29, 30, 32, and 39-44) have been cancelled.
4. Claims 1, 2, 4, 5, 8, 10, 12, 13, 16, 19, 20, 23, 25, 27, 28, 31, and 33-38 have been examined.

### **Allowable Subject Matter**

5. Claims 10, 12, 13, 16, 25, 27, 28, 31, 34, and 37 would be allowable if rewritten to overcome the rejections under 35 USC § 101.

**Affidavit Submission By Applicant**

6. The affidavit (Natural Gas Week, volume 14, number 49, December 7, 1998) filed on 24 February 2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the Ausubel (US 6,026,383) reference.

The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Ausubel (US 6,026,383) reference. Although the exhibit discusses an auction concept, there is not evidence that the Applicant's concept was reduced to practiced on or about the claimed date of conception. Moreover, the gaps in time between the exhibits provided to date do not demonstrate due diligence in developing the invention as claimed. In addition, although the exhibit discloses Vickery/Dutch auction techniques, apparently already old and well-known in the financial community and academia, the exhibit also shows no evidence that the Applicant's concept was reduced to practiced on or about the claimed date of conception.

**RESPONSE TO ARGUMENTS**

7. Applicant's arguments received on 08 July 2003 have been fully considered but they are not persuasive. Referring to the previous Office action, Examiner has cited relevant portions of the references as a means to illustrate the systems as taught by the prior art. As a means of

providing further clarification as to what is taught by the references used in the first Office action, Examiner has expanded the teachings for comprehensibility while maintaining the same grounds of rejection of the claims, except as noted above in the section labeled "Status of Claims." This information is intended to assist in illuminating the teachings of the references while providing evidence that establishes further support for the rejections of the claims.

As discussed above Applicant's affidavit presented on 24 February 2004 does not overcome the Ausubel (US 6,026,383) reference.

#### **Claim Rejections - 35 USC § 101**

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requires of this title.

9. Claims 1, 2, 4, 5, 8, 10, 12, 13, 16, 19, 20, 23, 25, 27, 28, 31, and 33-38 are rejected under 35 U.S.C. 101 because the claimed invention is directed to nonstatutory subject matter. The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract

idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, the recited steps of merely calculating, withholding, sorting, processing, selecting, announcing, collecting, rejecting, and iteratively performing calculations prior to a determining step does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed without the use of any technological apparatus, system or method such as, for example, a computer system, database, electronic circuit, or software application. These steps only constitute a method that is easily attainable without the use of any state-of-the-art devices or techniques.

### **Claim Rejections - 35 USC § 103**

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1, 2, 4, 5, 8, 19, 20, 23, 33, 35, 36, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausubel et al (Vickrey Auctions with Reserve Pricing, June 28, 1999) in view of Ausubel (US Patent No. 6,026,383, herein referred to as Ausubel '383), further in view of Dutch Auction Glossary (1997-1999 Cyberinvest.Com).

**Claim 1:**

Ausubel et al. shows a method of optimizing a Vickrey auction transaction to maximize revenue and profit to the seller, by withholding supply based on a market-derived reserve price calculated from buyer's bids (page 1, paragraph 1). Ausubel '383 provides supporting evidence. Ausubel '383 discloses that the intent of the method is to maximize revenue and profit (column 2, lines 23-26). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the Vickrey-type auction techniques to maximize profit and revenue because that is the goal of any rational business strategy.

In addition, based on the testimony by the Applicant in the affidavit filed on 31 October 2002 (paper #7) Exhibit B, the Examiner recognizes that techniques of the Dutch auction are known to be the same as the Vickrey auction. Dutch Auction Glossary (1997-1999 Cyberinvest.Com) is hereby incorporated as supporting evidence.

**Claim 2:**

Ausubel et al. demonstrates the economic theory of Vickery auctions with reserve pricing, including recording auction parameters and

calculating an optimum selling price; announcing the auction and collecting bids; sorting receiving bids; processing bids to determine the optimum selling price; selecting the winning bids (Ausubel, page 5, section 3, and Ausubel '383, column 1, line 54.). However, because Ausubel et al. is a theoretical research paper it does not show a physical system for carrying out a Vickrey auction with reserve pricing. Examples of on-line, automated auctions are prevalent in the art as noted by the applicant (page 6, line 14). The Ausubel '383 patent shows, in figures 1-4 and related text) the steps of: establishing a system for recording auction parameters and calculating a selling price and a communications network for announcing the auction and collecting bids (column 2, lines 61-67); sorting receiving bids (column 9, lines 57-59); processing bids to determine the selling price (Fig. 2b and related text); selecting the winning bids and notifying bidders of whether they won or lost based upon the calculated optimum selling price (column 7, lines 15-17). It would have been obvious to one of skill in the art at the time of the invention to use the automated auction system of '383 to implement the theoretical auction of Ausubel et al. because the automated auction system allows the auction to be conducted swiftly even if the bidders are not located on-site ('383, column 3, lines 33-35).

**Claim 4:**

The Ausubel '383 patent shows, in figures 1-4 and related text, announcing the selected auction parameters (column 6, lines 15-27;



collecting and recording bids containing (column 6, lines 63-65): the identity of the bidder (column 6, lines 63-65); quantity bid for (column 7, line 1) pricing information (column 6, line 63); and whether bidder will accept partial quantity, according to the procedures selected and announced (column 8, lines 5-7); rejecting nonconforming bids and noting any bid withdrawals (column 7, lines 8-12).

With regard to the limitations of whether a bidder will accept a partial quantity and rejecting nonconforming bids, the Examiner takes **Official Notice** that it is old and well-known in the equity markets trading arts to provide partial fill orders when the quantity available is less than the bid quantity. In addition, the Examiner takes **Official Notice** that rejection of non-conforming bids is also old and well-known in the equity markets trading arts, such as when a bidder does not have enough money to cover a winning bid, or the facilities to house and store the commodity when the auction has completed.

**Claim 5:**

The Ausubel '383 patent shows, in figures 1-4 and related text, the step of sorting and consolidating all at market bids and all price bids other than those less than the reserve price, wherein the price bids are ranked in descending order (column 9, lines 57-59).

**Claim 8:**

The Ausubel '383 patent shows, in figures 1-4 and related text, the step of sorting and consolidating all at market bids and all price bids other

than those less than the reserve price, wherein the price bids are ranked in descending order (column 9, lines 57-59).

**Claim 19:**

Ausubel et al. shows the further step of determining if the auction results are to optimized for seller profit rather than revenue, and if so, the step of determining a cost function to be included in subsequent calculations (section 3, page 5).

**Claim 20:**

Ausubel et al. shows the further step of determining if the auction results are to optimized for seller profit rather than revenue, and if so, the step of determining a cost function to be included in subsequent calculations (section 3, page 5).

**Claim 23:**

Ausubel et al. shows the further step of determining if the auction results are to optimized for seller profit rather than revenue, and if so, the step of determining a cost function to be included in subsequent calculations (section 3, page 5).

**Claim 33:**

The Ausubel '383 patent shows, in figures 1-4 and related text, the step of comparing the total number of items available to that required to supply all bidders that bid at or above the optimum selling price to determine if there are additional items available for sale, and if so processing bids made at market (column 9, lines 37-48).

**Claim 35:**

The Ausubel '383 patent shows, in figures 1-4 and related text, the step of comparing the total number of items available to that required to supply all bidders that bid at or above the optimum selling price to determine if there are additional items available for sale, and if so processing bids made at market (column 9, lines 37-48).

**Claim 36:**

The Ausubel '383 patent shows, in figures 1-4 and related text, the step of processing at market bids to determine if there are sufficient items available to supply all the at market demand, and if not, further comprising the step of applying the selected prorationing scheme (column 7, lines 40-46).

**Claim 38:**

The Ausubel '383 patent shows, in figures 1-4 and related text, the step of processing at market bids to determine if there are sufficient items available to supply all the at market demand, and if not, further comprising the step of applying the selected prorationing scheme (column 7, lines 40-46).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **James A. Reagan** whose telephone number is **(703) 306-9131**. The examiner can normally be reached on Monday-Friday, 9:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **James Trammell** can be reached at (703) 305-9768.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 305-3900**.

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks***

**Washington, D.C. 20231**

or faxed to:

<b>(703) 305-7687</b>	[Official communications; including After Final communications labeled "Box AF"]
<b>(703) 308-1396</b>	[Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451  
Crystal Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.

JAR

09 July 2004

